(14)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A. No. 705/2001 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

APPELLANT:
(In Jail)

Motiram, S/o Jagma,
Aged about 40 years,
Occupation: Agriculture,
R/o Jorador Chotkipara,
Police Station: Pathalgaon,
Distt.: Jashpur Nagar (C.G.)

- Versus -

RESPONDENT:

State of Chhattisgarh,
Through Police Station: Pathalgaon,
Distt.: Jashpur Nagar (C.G.)

{Criminal appeal under Section 374 (2) of the Code of the Criminal Procedure, 1973}

Division Bench:

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Sunil Kumar Sinha, JJ.

10-8-2007

Miss Sangeeta Mishra, counsel for the appellant.

Mr. Vinay Harit, Deputy Advocate General with Mrs. Anju Ahuja, Deputy Govt. Advocate for the State/ respondent.

Oral judgment dictated on Dais.

Sunil Kumar Sinha, J: -

This appeal is directed against the judgment of conviction and order of sentence dated 30-7-2001 passed by the 2nd Additional Sessions Judge (Fast Track Court), Jashpur Nagar in Sessions Trial No.58/2001, whereby the appellant was convicted under Section 302 of the I.P.C. and sentenced to undergo imprisonment for life and pay a fine of Rs.5,000/-, in default of payment of fine to further undergo R.I. for five months.

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Case of the prosecution, in brief, is that on 8-10-2000 at about 8 p.m. the appellant assaulted his wife by a club in his own house who received an injury. After the assault, the appellant went to the house of Sonibai (PW-7) and made extra judicial confession before her regarding assaulting the deceased. Report of the incident Ex.P-6 was lodged by Jogendra Kujur (PW-3), son of the accused, in Police Station: Pathalgaon. During the course of investigation, the body was sent for post-mortem to Primary Health Centre, Pathalgaon under requisition Ex.P-9. Post-mortem was conducted by Dr. P. Sudhar (PW-8) who prepared his report Ex.P-14. According to the post-mortem report, there was a depressed lacerated wound on right side of front portion of head admeasuring 3 cms. x ½ cm. x ½ cm., there was swelling on front side of chest having diffusion, skin over the swelling was reddish in colour and there was other swelling on back portion. On internal examination it was found that there was a depressed fracture of frontal bone and membrane of brain was also injured. A big blood clot was found beneath the brain membrane. According to the post mortem report, cause of death was head injury & injury on vital organ i.e. brain, and shock & coma due to the said injuries. In police custody, the accused gave memorandum under Ex.P-3 based on which club was seized under Ex.P-4. Blood stained towel was seized under Ex.P-5. Plain soil and blood stained soil were seized from the place of occurrence under Ex.P-2. A site plan was prepared by the Investigating Officer under Ex.P-8 and another site plan was prepared by the Patwari under Ex.P-13.

After usual investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Jashpur Nagar, who in turn committed the case to the Court of Sessions Judge, Raigarh, from where, the matter was received on

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transfer by the 2nd Additional Sessions Judge (Fast Track Court), Jashpur Nagar, for trial, who conducted the trial and convicted and sentenced the appellant, as aforementioned.

Learned counsel for the appellant argues that the prosecution has examined Jogendra Kujur (PW-3) as an eyewitness, but he has turned hostile and has not supported the case of the prosecution, and the evidence of other witness namely, Sonibai (PW-7) before whom the accused made extra judicial confession, is unreliable. In the alternative, she also argues that the manner in which the offence is said to have been committed, it would not travel beyond Section 304 Part-II of the I.P.C. and the appellant is in jail since 2000, therefore, if he is held to be guilty under Section 304 Part-II of the I.P.C., he may be punished for the period already undergone by him.

On the other hand, learned State counsel opposes these arguments and supports the judgment of conviction and order of sentence passed by the trial Court.

We have heard Miss Sangeeta Mishra, learned counsel for the appellant and Mr. Vinay Harit, learned Deputy Advocate General for the State.

So far as the evidence of Jogendra Kujur (PW-3) is concerned, he has deposed in first paragraph of his evidence that he does not know as to how his mother died. He has been declared hostile by the prosecution. After cross-examination by the Government Advocate, nothing material has been brought on record on which he can be said to be useful for the prosecution. As far as the evidence of Sonibai (PW-7) is concerned, she has deposed in

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her evidence that accused Motiram is son of her brother-in-law (Jeth), at about 9 p.m. Motiram had came to her house, said for a glass of water and thereafter, he made extra judicial confession that he had murdered the deceased. On this statement, she said as to why he murdered the deceased, he should have left her. On this again, he replied that "I have murdered her". Thereafter, he went from her house. Defence has not been able to bring anything material and adverse in the evidence of this witness. The extra judicial confession made by the accused/appellant before this witness appears to be true, genuine, natural and made in normal conduct. This witness does not appear to be biased or in any manner inimical to the accused. There does not appear to be any motive for attributing an untruthful statement to the accused by this witness. She has deposed categorically about the extra judicial confession made by the appellant to her.

So far as the law on the point of extra judicial confession is concerned, it is well settled that if the evidence to this effect is given by a truthful witness who appears to be unbiased, not even remotely inimical to accused and in respect of whom nothing is brought out which may tend to indicate that he may have a motive for attributing an untruthful statement to the accused, words spoken are clear, and unmistakably that the accused is the offender and nothing is omitted by the witness which may militate against it, after subjecting the evidence to rigorous test on the touchstone of credibility, If it passed the test, it can be accepted and can be the basis for conviction.

Therefore, on the above evidence on record which is supported by the post-mortem report and evidence of Dr. P. Sudhar (PW-8), it is established

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that the accused had assaulted the deceased on account of which she died and to this extent case of the prosecution is established.

So far as the second argument regarding offence not travelling beyond Section 304 Part-II of the I.P.C. is concerned, learned counsel for the appellant draws the attention of this Court towards the contents of the F.I.R. lodged by the son of the deceased. In the F.I.R., it has been mentioned that there was some quarrel between husband & wife on account of demand of money as the husband was demanding money from the wife for going to attend the Court hearing of some case. When the wife did not provide money to the husband, he threw her on ground and gave a Lathi blow over her head. Jogendra Kujur (PW-3) though has been declared hostile by the prosecution, but he has deposed that the report was lodged by him and the said report bears his signature. If we examine the evidence of Dr. P. Sudhar (PW-8), it would appear that he has also noticed one fatal injury on forehead of the deceased which was a lacerated wound and there was a fracture of frontal bone beneath the said injury.

After relying upon the contents of the F.I.R., post-mortem report and the evidence of Dr. P. Sudhar (PW-8), it appears that on account of quarrel in between husband & wife for some petty matter, the husband gave a blow on head of the wife which became fatal and the death was caused. From the above evidence it can be inferred that in fact, the accused had no intention to cause the death of his wife and all of a sudden, on a petty quarrel in between husband & wife the said injury was caused, but at the same time, it cannot be said that he was having no knowledge that the injury caused by him to his wife may be fatal or it is likely to cause her death. From the attaining

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आदेश पत्रक (पूर्वानुबद्ध)

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circumstances and on the evidence of Dr. P. Sudhar (PW-8) such knowledge can be attributed to the appellant.

In the facts and circumstances of this case, since a single injury appears to have been caused, all of a sudden, in a quarrel between husband & wife which ultimately proved to be fatal for the deceased, we are of the considered opinion that the offence in question would not travel beyond Section 304 Part-II of the I.P.C.

In the result, the appeal is partly allowed. Conviction and sentences imposed upon the appellant under Section 302 of the I.P.C. are set aside, he is acquitted of the said charge, instead thereof, he is convicted under Section 304 Part-II of the I.P.C. and sentenced to undergo R.I. for seven years.

It is stated that the appellant is in jail since 10-10-2000 till today. He shall be entitled to set-off against the above sentence imposed upon him.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Sunil Kumar Sinha
Judge

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